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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

GAYLE BISHOP,

No. C 01-4255 SBA

Petitioner,

ORDER

v.

THE CONTRA COSTA SUPERIOR COURT
AND ATTORNEY GENERAL OF THE STATE
OF CALIFORNIA,

Respondents.

Petitioner Gayle Bishop is a former Contra Costa County Commissioner convicted of misusing county-funded office space, office equipment, and employees to aid her reelection efforts and to conduct work related to her personal law practice, and of committing perjury during her testimony before a grand jury. Bishop was charged with five felony counts of misuse of public money; five felony counts of perjury; and one misdemeanor count of failure to report total campaign contributions. Count 10 of the information charged Bishop with committing perjury before a grand jury on March 14, 1996, by stating that she did not direct her staff to create, review and edit, on county time, campaign material targeted at specific geographical areas. Bishop was convicted of five counts of misuse of public money and four counts of perjury, including count 10. The California Court of Appeal affirmed Bishop's conviction on five counts of misappropriating public money and two counts of perjury.

After exhausting her state administrative remedies, Bishop filed a petition for writ of habeas corpus in this Court pursuant to 28 U.S.C. § 2254, challenging her convictions on a number of grounds. On September 14, 2004, this Court denied Bishop's petition in its entirety. *See* Docket No. 16. Bishop appealed and the Ninth Circuit Court of Appeals reviewed this Court's decision. The denial was affirmed except as to the perjury charge of count 10. The matter was remanded to this Court with instructions to grant the writ of habeas corpus with respect to that conviction. *See* Ninth Circuit Memorandum filed March 1, 2007, at 12.

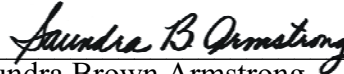
Accordingly, the Court will issue the writ vacating count 10 of Bishop's conviction, unless no

1 later than thirty days after the date of this order, the State either: (1) advises this Court that it will re-try
2 Bishop on count 10, or (2) moves for re-sentencing to exclude that perjury conviction. All other claims
3 for relief in the habeas petition are denied.

4 The Clerk of Court shall send copies of this Order and the Ninth Circuit Memorandum issued
5 on March 1, 2007, to the petitioner, counsel for the petitioner, the respondents, and counsel for the
6 respondents.

7 IT IS SO ORDERED.

8 April 24, 2007

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10 Sandra Brown Armstrong
11 United States District Judge
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